

January 21, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

— * —
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Mr. Leo Barnes
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201 West Seventh Street
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OR99-0155

Dear Mr. Barnes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121157.

The University of Texas at Austin (the "university") received a request for documents relating to the Journalism Department and the College of Communication on September 21, 1998. After seeking clarification of the request, the university received a follow-up request for twenty-one categories of documents on October 12, 1998. The university received a third request for documents on October 26, 1998. You object to items 11, 14, and 18 of the October 20 request. You also object to the "global request for all related chronologies" in the last paragraph of the October 20 request. Finally, you object to items 11, 15, 19, and 22 of the October 26 request. You claim that the documents responsive to these items of the requests are excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Initially, we must address the requestor's contention that the university waived its right to claim exceptions by failing to raise those exceptions within ten business days of receiving the September 21 request. Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. However, this office has held that the ten business day time period is tolled while a governmental body and a requestor are clarifying the request for information. *See* Open Records Decision No. 333 (1982).

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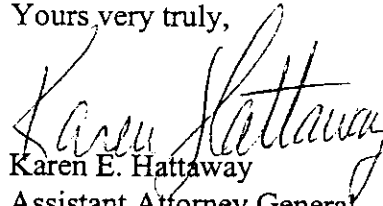
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In this case, the ten day deadline was tolled from September 24 to October 12, the period during which the university sought clarification of the September 21 request. Thus, the university met the ten business day deadline by requesting a decision from this office on October 20.

You contend that the documents at issue are excepted from disclosure under section 552.111 of the Government Code. A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. Open Records Decision No. 647 at 4 (1996). The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. Having considered your arguments, we find that you have met both prongs of the work product test for the submitted documents. Thus, we conclude that the documents are excepted from disclosure as attorney work product under section 552.111 of the Government Code.

Because we are able to resolve this matter under section 552.111, we do not address your other arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

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Enclosures: Submitted documents

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(w/o enclosures)